Supreme Court, U.S.
FILED
JAN 10 2010
OFFICE OF THE CLERK

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FILED
JAN 10 2009
OFFICE OF THE CLERK

NO. 09A648

IN THE UNITED STATES SUPREME COURT

IN RE: DENNIS HOLLINGSWORTH, GAIL J. KNIGHT, MARTIN F. GUTIERREZ, MARK A. JANNSON, AND PROTECT-MARRIAGE.COM—YES ON 8, A PROJECT OF CALIFORNIA RENEWAL

DENNIS HOLLINGSWORTH, et al.,
Petitioners,

vs.

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA,
Respondent,

KRISTEN M. PERRY, SANDRA B. STIER, PAUL K. KATAMI, JEFFREY J. ZARRILLO, CITY AND COUNTY OF SAN FRANCISCO, NON-PARTY THE MEDIA COALITION, ARNOLD SCHWARZENEGGER, in his official capacity as Governor of California, EDMUND G. BROWN, JR., in his official capacity as Attorney General of California, MARK B. HORTON, in his official capacity as Director of the California Department of Public Health and State Registrar of Vital Statistics, LINETTE SCOTT, in her official capacity as Deputy Director of Health Information & Strategic Planning for the California Department of Public Health, PATRICK O'CONNELL, in his official capacity as Clerk-Recorder for the County of Alameda, DEAN C. LOGAN, in his official capacity as Registrar-Recorder/County Clerk for the County of Los Angeles, and HAK-SHING WILLIAM TAM,
Real Parties in Interest.

On Appeal from the United States District Court
for the Northern District of California

OPPOSITION BY NON-PARTY MEDIA COALITION TO APPLICATION FOR IMMEDIATE STAY OF THE DISTRICT COURT'S ORDER PERMITTING PUBLIC BROADCAST OF TRIAL PROCEEDINGS

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ABC News, KGO TV, KABC TV, Cable News Network, In Session (formerly known as "Court TV"), Fox News, NBC Universal, Inc., CBS News, Hearst Corporation, Dow Jones & Company, Inc., The Associated Press, and the Northern California Chapter of the Radio & Television News Directors Association (the "Media Coalition") respectfully submit this Opposition to the "Application for the Immediate Stay of the District Court's Order Permitting Public Broadcast of Trial Proceedings" (the "Application"). Petitioners' Application is not ripe and does not satisfy the high standard required to grant the relief they seek.

PETITIONERS' BURDEN TO OBTAIN RELIEF

FROM THIS COURT IS EXTREMELY HIGH

Relief in in-chambers stay applications such as this one should be granted only in "extraordinary cases"; denial of such applications is the norm. *Rostker v. Goldberg*, 448 U. S. 1306, 1308 (1980) (Brennan, J., in chambers). To obtain relief, the applicant must demonstrate (1) "a 'reasonable probability' that four Justices will consider the issue sufficiently meritorious to grant certiorari or to note probable jurisdiction"; (2) "a fair prospect that a majority of the Court will conclude that the decision below was erroneous"; and (3) a likelihood that "irreparable harm [will] result from the denial of a stay." *Ibid.* Petitioners cannot satisfy any of these requirements, much less all of them.

The Order issued by the district court, the Honorable Chief Judge Vaughn Walker presiding, is well within that court's authority and discretion, and consistent with the unanimous decision by the Judicial Council of the Ninth Circuit to adopt a pilot program permitting camera access to certain federal proceedings. It is no wonder that the Ninth Circuit rejected Petitioners' request for a writ of mandamus: the Judicial Council's decision to create the pilot program followed years of consideration and analysis of the issue. Petitioners have not met their high burden to obtain extraordinary relief from this Court. The Media Coalition urges the Court to deny the Application, and permit camera access to the trial at issue here, for the reasons set forth below.

THE APPLICATION SHOULD BE DENIED BECAUSE NO APPEALABLE ORDER HAS BEEN ISSUED

Petitioners note in their Application that at the time they filed the Application, "there [was] no record that Chief Judge Kozinski ha[d] yet acted" on the request to permit remote viewing and/or internet streaming of the trial at issue here. Application at 2. Yet by the time this Application was filed, Judge Kozinski had indeed acted on part of the district court's request to "permit audio-video recording and transmission of pre-trial proceedings and trial" in this matter, agreeing to permit "real-time live streaming to federal courthouses ... and subject to such procedures and limitations as the district judge presiding over the case may

deem appropriate." Non-Party Media Coalition's Appendix in Support of Opposition to Application for Immediate Stay of the District Court's Order Permitting Public Broadcast of Trial Proceedings ("MC Appendix"), Tab 1. Decidedly however, Judge Kozinski has not yet acted on "[t]he request for posting the files of the videos on the district court's website," which "is still pending." *Id.*

Seen in this light, Petitioners' concerns, as expressed in the Application, are only with the district court's tentative decision to allow the video and sound recordings of the trial proceedings, that the court is prepared to publicly disseminate through the Internet. Application at 2, 4. Petitioners have expressed no opposition to the decision to stream the trial proceedings live to other courthouses. Indeed, when the district court announced months ago that cameras would be placed in the courtroom during this trial, Petitioners voiced no objection to that decision, nor do they challenge it in this Application. And Petitioners have never argued that the trial, or any part of it should be closed to the public. Trial witness lists have been exchanged and are publicly available through the court and its website; all of the trial proceedings at issue here will be open to the public. Because Petitioners' only challenge is to the public broadcast of the proceedings that they accept will be open to the public, their Application is not yet ripe, and the Court should deny it for that reason alone. *National Park Hospitality Assn. v. Dept. of Interior*, 538 U.S. 803 (2003).

THE DISTRICT COURT CAREFULLY BALANCED THE COMPETING INTERESTS IN DECIDING TO PERMIT BROADCAST OF THIS VITALLY IMPORTANT TRIAL

The trial proceedings scheduled to begin Monday involve a federal constitutional challenge to California's Proposition 8, which banned same-sex marriage – an issue of profound interest to millions of individuals throughout California, the nation and the world. As both the Ninth Circuit and the district court recognized, this civil bench trial presents an ideal opportunity for the Court to test its new policy and allow camera coverage of these proceedings, because it involves important constitutional issues on a matter of substantial public interest – whether California's constitutional amendment (Proposition 8) prohibiting same sex couples from marrying violates the due process and equal protection clauses of the federal Constitution.

Petitioners complain about the purported "haste" to amend the Ninth Circuit and district court rules, to allow camera access in this case. They ignore that this issue has been considered by the Ninth Circuit for years, and that the Ninth Circuit's Judicial Council unanimously approved the pilot program. The experienced district court judge who will oversee this trial understands the issues presented in this case, has overseen the unique discovery issues that have arisen, and fully appreciates the tremendous significance of the constitutional questions

the court is asked to decide. He decided after careful consideration of the competing interests that it is vital that these trial proceedings be broadcast, and for good reason.

The district court's decision to allow camera coverage of these historic trial proceedings will permit everyone interested to see, first hand, the trial of this social issue of the day. By accommodating the public's substantial interest in observing these trial proceedings, including the evidence offered by both sides, the district court will enhance the legitimacy of the decision ultimately rendered in this case. In deciding that this case should be the first trial in the Ninth Circuit's pilot program to have camera access, the district court appropriately acknowledged the tremendous public significance of this case. If camera access is ever appropriate – and it is – it is the high profile case, like this one, in which it is most important. The First Amendment mandates that the public be allowed to observe, so that it can understand, what occurs in the courtroom. The district court's decision permits the millions of people interested in this proceeding to view what actually occurs, so that they can better understand and accept the decision that the district court will make.

For this reason, Petitioners' repeated invocation of Judge O'Scannlain's concern for "individual litigants in individual cases" is completely misplaced. Application at 17, 23. This is not the typical case, in which the parties are fighting

about their own rights to money or property. The parties are fighting about the validity of a controversial amendment to California's Constitution. Petitioners will not be directly impacted by any decision in this case, and their individual rights are not at issue. Plaintiffs, whose rights are directly at issue, support the district court's decision to permit camera coverage of these proceedings. The individuals whose rights are directly at issue – the gays and lesbians who oppose Proposition 8 – should be permitted to see for themselves the trial proceedings that culminate in the decision that will control their rights.

In contrast to the enormous public interest in this matter, the parties opposing broadcast of these proceedings have advanced only illusory countervailing interests, and nothing that would justify barring cameras from this trial. This is not a criminal trial that implicates Sixth Amendment rights, nor is there any concern about jury taint in this bench trial.

Petitioners' primary argument is that their witnesses fear broadcast of their testimony. Application at 15. They go so far as to claim that all of their witnesses "have expressed concern over the potential public broadcast of trial proceedings." *Id.* They point to harassment and reprisals against supporters of Proposition 8, and argue that their witnesses fear the same reaction to their testimony. *Id.*; *see also* Appendix, Exhibit 12 at 2-3. But any witnesses will be testifying in open public court at the trial with heavy accompanying publicity in the print and electronic

media. If the purported harms identified by Petitioners exist at all, they will flow from the witnesses' mere participation in the trial. Their names and testimony will be available for all the world to see, as the witness list already is available through the district court's website and the trial transcripts also will be publicly available. Any opprobrium due to their participation in this trial will happen regardless of whether the trial is publicly available over the Internet or otherwise.

Petitioners demand secrecy on their terms. Yet, they voluntarily intervened in this contentious lawsuit to defend Proposition 8. Petitioners have not claimed that any of their witnesses are being compelled to testify; it appears that each is voluntarily participating in the trial to lend their support to this cause. Petitioners do not oppose public access, or argue that Petitioners or their witnesses must testify anonymously. Petitioners' concern is with the incremental additional publicity that will flow from the public dissemination of these trial proceedings over the Internet. Yet the harms they claim to fear flow from their decision to intervene in this proceeding, and the decisions of their witnesses to testify in support of Proposition 8. Having voluntarily chosen to inject themselves into this highly contentious judicial proceeding, they cannot now demand that they be allowed to hide from the public eye.

Moreover, Petitioners' arguments here stand in stark contrast to the very public support for Proposition 8 that preceded its enactment by California's voters,

as discussed by Plaintiffs in their separately-filed brief. Petitioners want to support this important, divisive issue – which will directly affect tens of thousands of people in California – but prevent the public from seeing for themselves whatever testimony and evidence Petitioners' witnesses may offer during this public trial.

In the end, it is important to understand what Petitioners urge here. Petitioners ask this Court to conclude that *as a matter of law*, camera access cannot be permitted in these proceedings. They ask the Court to reject the careful consideration of the competing interests by the district court presiding over this case, and conclude that the court had *no discretion* to permit camera access. The relief Petitioners seek is extreme; they have failed to meet their burden of demonstrating that the district court abused its broad discretion in deciding to permit broadcast, under the court's careful supervision, of the public trial proceedings here.

Each of the issues raised in the Application was presented to and carefully considered by the district court. The court announced a nuanced approach to allowing camera access designed to accommodate each of Petitioners' concerns. Petitioners claim that they fear a "media circus," reiterating in this Court their same concerns about witness intimidation, raised below. In doing so, they grossly underestimate the ability of this experienced district court judge to exercise his inherent powers, and expressed willingness to take all appropriate steps to protect

participants involved in this proceeding. There has been no showing in this case that any exceptional circumstances are present that require this Court's intervention to prohibit the public from viewing through the media, what transpires in open court.

THE NINTH CIRCUIT JUDICIAL COUNCIL CAREFULLY WEIGHED THE BENEFITS OF CAMERA ACCESS AGAINST THE CLAIMED DETRIMENTS

On December 17, 2009, the Judicial Council of the Ninth Circuit voted unanimously to permit district courts within the circuit to experiment with the video recording of some proceedings in civil non-jury cases. Appendix, Exh. 13 at 1. In announcing this experiment, Chief Judge Alex Kozinski stated that the Judicial Council of the Ninth Circuit "hope[s] that being able to see and hear what transpires in the courtroom will lead to a better public understanding of our judicial processes and enhanced confidence in the rule of law." *Id.* On December 22, 2009, Local Rule 77-3 was amended to allow the use of cameras in civil cases approved under test programs. *See* Civil Local Rule 77-3 (providing that "[u]nless allowed by a Judge or a Magistrate Judge ... *for participation in a pilot or other project authorized by the Judicial Council of the Ninth Circuit*, the taking of photographs, public broadcasting or televising ... in connection with any judicial proceeding[] is prohibited." (Revisions emphasized.). Accordingly, the district

court acted well within its discretion and consistent with the many cases that have recognized that trial courts should have the discretion to permit camera access.

A. Numerous Courts Have Recognized the Benefit of Public Access.

The dozens of decisions during the modern era that consistently have expanded the public's rights to obtain information about trials and the judiciary have rested on the public's "right to observe the conduct of trials." *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 572 (1980) (emphasis added). This right of observation guarantees not just that members of the public may visit courtrooms, but that all members of the public have the right to view trials. *See id.* at 594 (Brennan, J. concurring) (citing *Cowley v. Pulsifer*, 137 Mass. 392, 394 (1884) (Holmes, J.) ("It is desirable that the trial of causes should take place under the public eye [so that] every citizen should be able to satisfy himself with his own eyes as to the mode in which a public duty is performed")).

As this Court told Congress, in discussing whether electronic access of court proceedings should be permitted:

> You can make the argument that the most rational, the most dispassionate, the most orderly presentation of the issue is in the courtroom, and it is the outside coverage that is really the problem. In a way, it seems perverse to exclude television from the area in which the most orderly presentation of the evidence takes place.

Hearings Before a Subcm. Of the House Comm. on Appropriations, 104th Congress, 2d Sess. 30 (1996).

In the fifteen years since this statement was made, the Court's prescience and insight certainly has proven true. If there is a public benefit to public trials – and there is – then there also is a public benefit to complete access to public trials. Two hundred years ago, the court accommodated the public's interest in court proceedings by moving high profile proceedings to a larger building. As the Supreme Court noted in *Press Enterprise v. Superior Court* ("*Press Enterprise II*"), 478 U.S. 1, 10 (1986), the probable cause hearing in the Aaron Burr trial "was held in the Hall of the House of Delegates in Virginia, the courtroom being too small to accommodate the crush of interested citizens." Through the use of cameras in the courtroom and the Internet, today's technology affords a much easier way to provide access to members of the public who are interested in following this important case, in which the Court is asked to decide the constitutionality of California's constitutional ban prohibiting same sex couples from marrying.

In *Richmond Newspapers*, 448 U.S. at 573, this Court noted that "[i]nstead of acquiring information about trials by first hand observation or by word of mouth from those who attend, people now acquire it chiefly through the print and electronic media." 448 U.S. at 573. The Court explained that this development "validates the media claim of functioning as surrogates for the public." *Id.* at 573. Full media access to judicial proceedings is especially important given the pace of

modern life and the size of our metropolitan areas. With the myriad commitments and responsibilities that each person faces on a daily basis, there is simply no time to attend judicial proceedings in person.

While an individual may be available to attend trial proceedings, the sheer number of such interested observants in cases like this one guarantees that only a small fraction could be admitted at any given time. Even with the overflow courtrooms announced to accommodate the extraordinary public interest in these proceedings, there remains limited physical space. These physical limitations have not been lost on courts and legislatures that have considered the issue. As a committee of the California Legislature recognized in 1967, long before technological advances permitted the unobtrusive recording of court proceedings, because "sprawling urbanism has replaced concentrated ruralism," and because "no courtroom in the land could hold even a minute fraction of the people interested in specific cases, ... a trial is not truly public unless news media are free to bring it to the home of the citizens by newspaper, magazine, radio, television or whatever device they have." Similarly, the Third Circuit acknowledged the practical obstacles that prevent full public attendance at trials, asking rhetorically, "What exists of the right of access if it extends only to those who can squeeze through the [courtroom] door?" *United States v. Antar*, 38 F.3d 1348, 1360 (3d

Cir. 1994). In other words, a courtroom is open only in theory when the general public has no opportunity to view the events transpiring therein.

The ability to show the public exactly what happens in the courtroom is a crucial component of news coverage in the digital age. As Justice Marshall observed in *Richmond Newspapers*, "[i]n advancing the [] purposes [of open judicial proceedings], the availability of a trial transcript is no substitute for a public presence at the trial itself. As any experienced appellate judge can attest, the 'cold' record is a very imperfect reproduction of events that transpire in the courtroom." 448 U.S. at 597 n.22 (Marshall, J., concurring). To enable the media to perform its surrogate function most effectively, the maximum amount of information must be available to the public. The most effective means of making accurate, objective information available is by allowing cameras in court.

B. The First Amendment Presumptive Right In Favor Of Full Public Access To Judicial Proceedings Also Supports Electronic Access To Entire Trials.

This Court long has recognized that a trial is a "public event." *Craig v. Harney*, 331 U.S. 367, 374 (1947). In 1980, the Court reaffirmed this principle, finding that the press and the public have a constitutional right to observe trials, absent compelling and clearly articulated reasons for closing such proceedings. *Richmond Newspapers*, 448 U.S. at 580. As the Court stated, "[T]he appearance of justice can best be provided by allowing people to observe it." *Id.* at 571. The

Court noted that the strong historical tradition in Western jurisprudence in favor of public observation of trials is a practice that predates the Norman Conquest. *Id.* at 565.

This tradition of public access assumes even greater importance in our democratic system, where the government and all of its actions ultimately are held accountable by the voters. "People in an open society do not demand infallibility from their institutions," the Court concluded, " but it is difficult for them to accept what they are prohibited from observing." *Id.* at 572. For these reasons, the Court noted that "historically both civil and criminal trials have been presumptively open" to the public. *Id.* at 580 n.17 (emphasis added); *see also id.* at 598 (Stewart, J. concurring) (stating that "the First and Fourteenth Amendments clearly give the press and the public a right of access to trials themselves, civil as well as criminal").

The concept of observation – that members of the public ought to be allowed to see for themselves public trials – is a cornerstone of the constitutional right recognized in *Richmond Newspapers*. As Chief Justice Burger stated in tracing our historical tradition of open proceedings, "part of the very nature of a criminal trial was its openness to those who wished to attend." *Id.* at 568. Members of the community always possessed the "right to observe the conduct of trials." *Id.* at 572. Through cameras in the courtroom, citizens again have a meaningful

opportunity to exercise their constitutional right to observe trials. For that right to have meaning, the First Amendment right of access should include, at a minimum, a right for the court overseeing a trial to conclude, in its broad discretion, that public access to the trial will further these important constitutional principles.

The purposes of the constitutional rights to attend and observe trials are well established, and are promoted by the use of cameras in the courtroom. Not only does public observation of trials educate the public about the rule of law and the functioning of the justice system, it also serves to reinforce public acceptance – crucial in a democratic society – of "both the process and its results." *Id.* at 571. As Justice Brennan declared:

> Secrecy of judicial action can only breed ignorance and distrust of courts and suspicion concerning the competence and impartiality of judges; free and robust reporting, criticism, and debate can contribute to public understanding to the rule of law and to comprehension of the functioning of the entire criminal justice system, as well as improve the quality of that system by subjecting it to the cleansing effects of exposure and public accountability.

Nebraska Press Ass'n v. Stuart, 427 U.S. 539, 587 (1976) (Brennan, J. concurring). Similarly, in *Globe Newspaper Co. v. Superior Court*, 457 U.S. 596, 606 (1982), the Court emphasized that public access to court proceedings allows "the public to participate in and serve as a check upon the judicial process – an essential component in our structure of self-government."

Allowing camera coverage of these trial proceedings will ensure that the public has the most complete and accurate account of these proceedings. Without question, the trial will be the subject of intense publicity regardless of whether cameras are used in the courtroom. As the Florida Supreme Court acutely observed, "newsworthy trials are newsworthy trials, and ... they will be extensively covered by the media both within and without the courtroom," whether or not cameras are permitted. *In re Petition of Post-Newsweek Stations, Inc.*, 370 So.2d 768, 776 (Fla. 1979). Written reports on trials can and do provide thoughtful, accurate and detailed accounts of what transpires in the courtroom. Through allowing electronic coverage of the actual testimony in the courtroom, the Court can ensure that the public receives a complete account of the proceedings. Since citizens will judge the proceedings with whatever information they possess, public understanding will be enhanced by allowing all interested members of the public to observe through cameras what actually takes place in the trial concerning the constitutionality of Proposition 8, consistent with the public and the media's presumptive right of access to judicial proceedings.

Just as the chronicles of the trial concerning the teaching of evolution in schools riveted the country in the 1920s, allowing camera coverage of this trial will provide viewers with a national civics lesson concerning the role of the independent federal judiciary in its constitutional review of the hotly contested

issue of same-sex marriage – an issue that crosses social, political, educational, and religious boundaries. The California Supreme Court recently permitted live camera coverage of the oral argument on the state constitutional challenge to Proposition 8, allowing millions to observe its proceedings. Many other courts have permitted the media to broadcast newsworthy judicial proceedings, including the Florida Supreme Court during the *Bush v. Gore* Florida recount. The recognition of these courts of the public's right of access to televised proceedings of these high profile legal proceedings has greatly enhanced the ability of the public to observe what transpires in the public courtroom and has demystified the judicial process for millions of people.

C. The Purported Problems Of Camera Access Are Easily Remedied, Or Illusory.

The public benefits achieved by allowing electronic camera access to these trial proceedings will further the fairness and efficiency of the proceedings. It has been nearly four decades since this Court overturned a conviction based on the "considerable disruption" of early-model television equipment, the precedent repeatedly cited by Petitioners. *See Estes v. Texas*, 381 U.S. 532, 536 (1965). Even then, Justice Harlan, the dispositive concurring vote, recognized that the day might come when "television will have become so commonplace an affair in the daily life of the average person as to dissipate all reasonable likelihood that its use in courtrooms may disparage the judicial process. If and when that day arrives the

constitutional judgment called for now would of course be subject to re-examination in accordance with the traditional workings of the Due Process Clause." *Id.* at 595–96 (Harlan, J., concurring).

Justice Harlan's prescience was vindicated in 1981, when a unanimous Supreme Court held that televising a trial – over the objections of two criminal defendants – was not a violation of their due process rights. *Chandler v. Florida*, 449 U.S. 560, 576 (1981). Chief Justice Burger's opinion emphasized that *Estes* had not established a rule banning states from experimenting with an "evolving technology, which, in terms of modes of mass communication, was in its relative infancy in 1964 . . ., and is, even now, in a state of continuing change." *Id.* at 560. The unanimous *Chandler* opinion also observed that "the data thus far assembled was cause for some optimism about the ability of states to minimize the problems that potentially inhere in electronic coverage of trials." *Id.* at 576 n.11. Therefore, in roughly fifteen years the technological advance that Justice Harlan had anticipated made televised coverage of trials acceptable as a matter of this Court's precedent.

Now, almost thirty years after *Chandler*, further technological progress has removed any doubt that cameras can be present in the courtroom without any concomitant disruption. It is not surprising, therefore, that several lower courts recently have had little trouble distinguishing *Estes*, noting that the Court in that

case "explicitly recognized that its holding ultimately relied on the then-state of technology[.]" *Katzman v. Victoria's Secret Catalogue*, 923 F. Supp. 580, 589 (S.D.N.Y. 1996). As that court noted, because of "advances in technology, the old objections to cameras in the courtroom – that they were obtrusive and would disrupt the trial – "should no longer stand as a bar to a presumptive First Amendment right of the press to televise ... court proceedings, and of the public to view those proceedings on television." *Id.*

Indeed, any concerns about the adverse impact of full-time camera coverage are belied by the research conducted in various states, including California, which have reached virtually identical conclusions concerning the impact – or lack of impact – on trial participants from the presence of cameras. At least a dozen states – including Arizona, California, Florida, Hawaii, Kansas, Louisiana, Maine, Massachusetts, Minnesota, Nevada, New Jersey, New York, Ohio, and Virginia – have studied the potential impact of electronic media coverage on courtroom proceedings, particularly focusing on the effect cameras have upon courtroom decorum and upon witnesses, attorneys and judges. MC Appendix, Tab 3 at Exh. C at 38-42. The results from the state studies were unanimous: the claims of a negative impact from electronic media coverage of courtroom proceedings – whether civil or criminal – are baseless. *Id.* For example, the state studies

revealed that fears about witness distraction, nervousness, distortion, fear of harm, and reluctance or unwillingness to testify were unfounded. *Id.*

California's 1981 report on the effect of electronic coverage of court proceedings is one of the most comprehensive of the state evaluations that have been completed. MC Appendix, Tab 3 at Exh. D. The California study included observations and comparisons of proceedings that were covered by the electronic media, and proceedings that were not. *Id.* Not only did California's survey results mirror those of other states – finding that there was no noticeable impact upon witnesses, judges, counsel, or courtroom decorum when cameras were present during judicial proceedings – the "observational" evaluations completed in California further buttressed these results. *Id.* For example, after systematically observing proceedings where cameras were and were not present, consultants who conducted California's study concluded that witnesses were equally effective at communicating in both sets of circumstances. *Id.* Not surprisingly, the California study also revealed that there was no, or only minimal, impact upon courtroom decorum from the presence of cameras. *Id.*

The positive results of the state court evaluations were further bolstered by the Federal Judicial Center's 1994 study of a three-year pilot program that permitted electronic media coverage in civil proceedings in six federal district courts and two circuit courts. MC Appendix, Tab 3 at Exh. C. The federal study

concluded that no negative impact resulted from having cameras in the courtroom. *Id.* Thus, the extensive empirical evidence that has been collected on the impact of electronic coverage consistently has concluded that such coverage is not detrimental to the parties, to witnesses, to counsel, or to courtroom decorum. *Id.*

These empirical studies support the Ninth Circuit's decision to experiment with allowing federal district courts to allow camera coverage of civil, non-jury trials. Petitioners' concerns about "privacy" are wholly undermined by the reality that all witnesses at the trial will be testifying publicly in open court, and will be the subject of intense media attention regardless of whether the proceedings are available through the Internet and other media.

CONCLUSION

Petitioners' Application is not ripe and none of their arguments warrant this Court's intervention to grant the extraordinary relief sought here. The concerns of the participants and the widespread public interest in these legal proceedings are appropriately addressed by the district court's Order and consistent with the Ninth Circuit's pilot program.

The Media Coalition, therefore, respectfully requests that the Court deny the Application to Stay.

RESPECTFULLY SUBMITTED this 10th day of January, 2010.

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